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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. RONALD L. BERG, Defendant and Appellant.	B236694 (Los Angeles County Super. Ct. No. BA347057)

APPEAL from a judgment of the Superior Court of Los Angeles County, Anne Egerton and Monica Bachner, Judges. Affirmed.

Karen Kelly for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Ronald L. Berg appeals from his conviction for the first degree murder of his wife. He contends the trial court erred in finding him competent to stand trial. He also challenges the sufficiency of the evidence to support the jury's murder verdict. Appellant contends, and respondent concedes, that the abstract of judgment does not reflect that the court stayed a $5,200 parole revocation fine.

We find substantial evidence to support the trial court's finding that appellant was competent to stand trial and that the killing was deliberate and premeditated, and hence first degree murder. We order the abstract of judgment corrected to reflect the trial court's oral pronouncement that the parole revocation fine was imposed, but stayed. The judgment of conviction is affirmed.

FACTUAL AND PROCEDURAL SUMMARY

On the morning of September 28, 2008, appellant called 911 to report that he had stabbed his wife and that she was dying. When police officers responded to appellant's townhouse, he stepped out of the door, with blood on his hands, forearms, and shirt. He was taken into custody. The body of his wife, Violetta Berg, was found in a bedroom. Two knives were nearby, one with a bent blade. The bottom portion of a clothes iron also was on the floor. Appellant said he was afraid his wife had planned to leave him. After being advised of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436, appellant gave a lengthy statement to the investigating detective in which he admitted killing his wife. The audio recording of the interview was played for the jury, which also was supplied with a transcript of the recording.

The medical examiner determined that Mrs. Berg suffered multiple fatal stab wounds with additional stab wounds to her face, head, neck, chest, back, and both hands. In his opinion, the knives recovered at appellant's house could have caused those injuries.

Appellant was charged with willful, deliberate and premeditated murder (Pen. Code, § 187, subd. (a); statutory references are to this code). The information also alleged that appellant personally used deadly and dangerous weapons, an iron and two

knives, in the commission of the murder. (§ 12022, subd. (b)(1).) Appellant pled not guilty.

Appellant's trial counsel declared a doubt as to appellant's mental competence to stand trial. (§ 1368.) Appellant waived his right to jury trial on the issue and a hearing was held. After hearing expert opinion testimony from both sides, the trial court found appellant mentally competent to stand trial. Appellant entered a dual plea of not guilty and not guilty by reason of insanity, but withdrew the plea of not guilty by reason of insanity before trial. He did not testify in his own defense. The jury found him guilty as charged. Appellant's motion for a new trial was denied. Appellant was sentenced to state prison for a term of 25 years to life, plus one year for the use of a deadly weapon (the iron), to be served prior to the indeterminate term. One-year enhancements for the use of knives were stayed pursuant to section 654. Appellant filed a timely appeal.

DISCUSSION

I

Appellant argues the trial court erred in finding him competent to stand trial.

"'The criminal trial of a mentally incompetent person violates due process. (*Cooper v. Oklahoma* (1996) 517 U.S. 348, 354.) However, a defendant is not incompetent if he can understand the nature of the legal proceedings and assist counsel in conducting a defense in a rational manner. (See *ibid.*; § 1367.)' (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1047.) A defendant is presumed competent unless the contrary is proven by a preponderance of the evidence by the party contending he or she is incompetent. (§ 1369, subd. (f); *Medina v. California* (1992) 505 U.S. 437; *People v. Medina* (1990) 51 Cal.3d 870, 881–885; Cal. Rules of Court, rule 4.130(e)(2).) In reviewing on appeal a finding of competency, 'an appellate court must view the record in the light most favorable to the verdict and uphold the verdict if it is supported by substantial evidence.' (*People v. Marshall* (1997) 15 Cal.4th 1, 31.)" (*People v. Blacksher* (2011) 52 Cal.4th 769, 797 (*Blacksher*).)

A. Appellant's Mental Health History

In connection with an application for Social Security disability in 1976, appellant was diagnosed as suffering from severe obsessive compulsive symptoms with psychotic episodes. He was receiving psychotropic medications at the time.

In 1983, appellant was escorted to a Kaiser psychiatric facility by a counselor from his job. He had exhibited strange and inappropriate behavior at work, including paranoia. Appellant was diagnosed as having a personality disorder with schizoid and paranoid features. During treatment in 1983, the psychiatrist at Kaiser began to believe that appellant suffered from a primary mood disorder with mania. Appellant improved through treatment with Lithium. The Kaiser discharge diagnosis in 1984 was bipolar disorder, manic. Later in 1984, his employer referred him to a social worker, who referred appellant to Kaiser. Once again appellant was having difficulties at work, talking too much and believing his supervisors were angry at him.

Despite these mental health issues, appellant worked for Union Bank as an accounting clerk from 1981 to 1999. He also worked as an instructor for the Los Angeles Unified School District from 1990 through 2008.

In February 2008, appellant saw a licensed clinical social worker. He presented with symptoms of a mood disorder, combined with symptoms of depression and mania, irritable mood, racing thoughts, distractibility, and symptoms of psychosis. About a month before the murder, appellant saw a podiatrist who noted he was nervous, anxious and inappropriate in his affect with disordered thoughts. During the appointment, appellant communicated with the physician through his wife.

Following his arrest, appellant was involuntarily committed to a psychiatric jail facility as a danger to himself and as gravely disabled. He was diagnosed at that time with "psychosis NOS" ("not otherwise specified"). Appellant was started on psychotropic medication, Seroquel, and Prozac.

B. Defense Evidence at Competency Hearing

At the beginning of the competency hearing, counsel for appellant said she would not be contending that appellant was unable to understand the proceedings and the roles

of the judge and jury. Instead, her focus was on whether he had the ability to consult with his attorney with a reasonable degree of rational understanding, and was able to assist in his defense. The defense experts on these issues were Dr. Richard G. Dudley, Jr. and Dr. Sarah Schaffer.

1. Dr. Dudley

Dr. Dudley, a psychiatrist based in New York, concluded that appellant satisfied the first prong of the competency test because he understood the charges against him, the possible punishment, and the roles of the various players. But he concluded appellant was not competent to stand trial because he was not able to assist counsel in his own defense. In his opinion, appellant was not able to understand instructions and advice from his attorney, make decisions based on the advice of his counsel, follow trial testimony for contradictions or errors, or testify in his own defense.

Dr. Dudley had testified as an expert in psychiatry in California, as well as other state and federal courts, but had not previously testified on competency to stand trial in California. He interviewed appellant for a total of 19 to 20 hours in three sessions in 2009 and 2010. He described appellant's thinking as disorganized and easily distractible. He found it difficult to obtain a coherent history. Appellant exhibited nonstop speech. Dr. Dudley reviewed appellant's mental health records and employment records. He found a 30-year history of mental health problems. Dr. Dudley testified that many of these referrals for treatment were similar because they were based on appellant's inability to function at work due to anxiety, agitation, paranoia, and inability to deal with basic tasks. Appellant also had exhibited inappropriate social behavior at work. In addition, Dr. Dudley relied on neuropsychological testing performed by Dr. Schaffer, who found the same pattern of cognitive deficits.

Dr. Dudley diagnosed appellant with having longstanding problems with social interactions, e.g. the capacity to read social cues and respond appropriately. As a result, appellant consistently misperceived the behavior of other people, and responded inappropriately. In addition, in Dr. Dudley's opinion, appellant had longstanding "mood difficulties" shown by a mix of depressive symptoms and "hypomanic symptoms." This

made it difficult for appellant to stay focused, and to sort out relevant from irrelevant information. In addition, he diagnosed appellant with cognitive problems, including difficulty in learning material, problem solving, and mental flexibility. The paranoid symptoms arose when appellant became extremely stressed and unable to understand what was going on around him. Neurological testing by Dr. Kowell revealed findings consistent with these conclusions. In stressful situations, like a trial, appellant's symptoms were likely to get worse. Dr. Dudley explained that appellant's developmental disability and cognitive difficulties were not likely to improve with treatment at a state hospital.

2. Dr. Schaffer

Dr. Schaffer is a clinical neuropsychologist, specializing in the use of tests to evaluate brain function. She works at the Long Island Issue Medical Center Comprehensive Epilepsy Center, doing neurological testing on patients with epilepsy or other neurological conditions. This was the first case in which she was asked to render an expert opinion on competency of a defendant. She conducted two neuropsychological evaluations of appellant. Appellant persevered in talking about certain topics to the exclusion of anything else. He had difficulty following Dr. Schaffer's directions. In her opinion, appellant exhibited paranoid beliefs when he expressed fear that the jail guards were going to attack him and that he would be sent to the "death house" for execution. Appellant also had problems remembering new information.

Dr. Schaffer concluded that appellant was unable to satisfy the second prong of the competency test because he could not rationally consult with counsel, assist in his defense, perceive and interpret testimony for contradictions or errors, or testify relevantly. She concluded that appellant was unable to comprehend instructions and advice from an attorney or to make decisions after receiving advice.

3. Recording of Appellant's Conversation with Counsel

The defense offered a list of topics drawn up by appellant during the competency hearing and a recording of a discussion between appellant and his counsel about that list as evidence of his incompetence to stand trial.

C. Prosecution Evidence at Competency Hearing

Dr. Kory Knapke, a Los Angeles Superior Court panel psychiatrist, testified for the prosecution on the issue of appellant's competence to stand trial. He met with appellant twice for one-hour interviews. Before the first interview, he reviewed the police reports. Later, before the second interview, he reviewed reports by Drs. Dudley and Schaffer. Before beginning his testimony, Dr. Knapke had not reviewed appellant's medical records from Kaiser, his Social Security Administration disability records, or his employment records. Initially Dr. Knapke was unaware that appellant had been involuntarily committed to the jail psychiatric ward in 2008 after his arrest, with a diagnosis of psychosis N.O.S. During a recess in the competence proceedings, Dr. Knapke reviewed the jail records and appellant's medical and disability records. He said that the additional materials "only strengthened" his opinion that appellant was competent to stand trial.

In the first interview with Dr. Knapke, appellant was calm, rational, and spoke at a normal rate and normal tone of speech. He was not distracted and was able to respond appropriately to Dr. Knapke's questions. He did appear nervous. Appellant frequently told Dr. Knapke "that inmates would tell him what to say to treating psychiatrists whenever he's evaluated." He was fearful about saying the wrong thing during the interview, but did not demonstrate psychotic symptoms. He was not delusional. His thoughts were so logical, coherent, and rational that Dr. Knapke wondered why a doubt was declared regarding appellant's competency. In his experience, defendants found incompetent to stand trial have "glaring" symptoms of mental illness, which appellant did not. Appellant did not have symptoms of short-term or long-term memory loss.

Appellant told Dr. Knapke he played chess with other inmates, but frequently lost. He was able to tell Dr. Knapke that he was charged with first degree murder, describe the role of the district attorney, and explain the difference between a public defender and a private defense attorney. He defined a plea bargain. When asked the potential sentence for murder if convicted, appellant said the death penalty had been taken off the table, but that he faced a term of 25 years to life in prison. Dr. Knapke asked appellant how he

would handle a situation in which a witness lied about him on the stand. Appellant said "he would whisper to his attorney that the witness is lying to inform his defense attorney about that incident." Based on this information, Dr. Knapke concluded "this is an individual that understands the charges and proceedings against him and does understand basic courtroom proceedings." He concluded appellant was competent to stand trial.

Appellant described his history of psychiatric problems and treatment for Dr. Knapke, including a diagnosis of personality disorders. Dr. Knapke explained that "a personality disorder is not a major mental illness, it is basically a pervasive pattern of problems dealing with other people and your environment that are chronic behavior patterns, beginning in adolescence and continuing throughout a lifetime, and there is very little mental health professionals can do for individuals suffering from a personality disorder other than long-term psychotherapy." Although appellant said he previously had been diagnosed with manic depression as well as obsessive-compulsive disorder, Dr. Knapke saw no indication of behavior consistent with these diagnoses during his evaluations.

Dr. Knapke also concluded that appellant satisfied the second prong of the test for competency since he understood the proceedings, "was happy to be working with his current attorney", and realized his attorney spoke for him. Appellant did not exhibit psychotic symptoms or memory problems that would interfere with his ability to rationally cooperate with counsel. He did talk excessively about a particular topic, but the information was logical and coherent, and he was easily redirected to another topic. Dr. Knapke did not observe appellant to be experiencing pressured speech of the type frequently seen in patients who are manic.

In light of the conclusion of the defense experts that appellant was not competent to stand trial, Dr. Knapke reevaluated him several months after the first interview. Appellant presented in almost the same way as he had in the earlier evaluation. He was calm, attentive, responded appropriately and spontaneously, and was articulate, although nervous. Appellant said that other inmates had told him to act stupid whenever he was interviewed by mental health doctors. He attempted to talk about the crime before

Dr. Knapke interrupted him. Those comments indicated appellant's memory was intact, and his account appeared to be rational. From this Dr. Knapke concluded that appellant would be able to give a similar rational explanation of the circumstances to his defense attorney, and in testimony in court. In response to a question by Dr. Knapke, appellant correctly described the difference between first and second degree murder.

Dr. Knapke strongly disagreed with Dr. Dudley's opinion that appellant was incompetent to stand trial. He did not find appellant to have disorganized thoughts. In addition, Dr. Knapke did not find appellant's fear of the victim's family to be a paranoid delusional statement "[b]ecause many victim's families are indeed angry with an alleged perpetrator who might have killed a loved one." This is very common in Dr. Knapke's experience. He did not find appellant's speech to be pressured, and easily interrupted him during both interviews. He strongly disagreed with Dr. Dudley's description of appellant as exhibiting extreme agitation. Appellant was not agitated at all during Dr. Knapke's interviews, and was instead pleasant and calm. During the second interview, other nearby inmates patted appellant's back, as if they had a good rapport with him. Appellant responded to this appropriately, smiling and saying "hello" before resuming the interview.

Dr. Knapke disagreed with Dr. Schaffer's diagnostic impression that appellant suffers from a pervasive developmental disorder, basically a type of autism. He did not see any evidence of autism or other pervasive disorders such as Asperger's Syndrome. Rather, Dr. Knapke believed appellant's problems to have been a personality disorder, although he could not make that diagnosis on the basis of two clinical examinations. He concluded that since appellant was reading books and playing chess while in jail, he could easily rationally cooperate with his attorney in his defense. In his opinion, appellant's memory problems are so subtle they would not impinge on his ability to rationally cooperate with counsel. He strongly believed appellant was competent to stand trial.

In Dr. Knapke's opinion, appellant did not suffer from anxiety and depression such as to render him incompetent to stand trial. He explained that many criminal

defendants are anxious and depressed over their legal proceedings but still are able to rationally cooperate with counsel. Based on indications that appellant had dependent personality traits, Dr. Knapke suggested that he would be very compliant with his attorney's advice. In his experience, Dr. Knapke had found that 30 percent of the inmates he evaluated under section 1368 were incompetent to stand trial.

Dr. Knapke noted that by September 2009, the psychiatrist at the jail reported that appellant had no delusions of any type, was not manic, and seemed very stable. The jail records also reported that appellant participated well in group therapy and was not disruptive.

D. Trial Court Ruling

The court reviewed the evidence presented at the hearing, including reports of the examining experts, as well as appellant's work, psychiatric, and academic histories. It noted that Dr. Schaffer had never performed a competency evaluation for a California court and that Dr. Dudley had little experience in such matters. Dr. Knapke's diagnosis of appellant was found the most accurate by the trial court: long-standing traits of a personality disorder with mild depression and anxious features. The court found no support in the record for Dr. Dudley's diagnosis that appellant was incompetent due to pervasive developmental disabilities and an unspecified cognitive impairment.

The court concluded that until the present offense, appellant had led a more successful life than 98 percent of the defendants who had come before the court. He had college and graduate degrees, and had held two jobs for many years with consistent promotions. He was married twice, once for about 25 years, and once for about 20 years. The court found that appellant's depression and anxiety were rational responses to his current situation. While appellant had poor judgment and insight, the court observed that this was true of most defendants in criminal cases.

The court found that the list of topics appellant prepared and discussed with his defense counsel during the competency proceedings were "really not off the wall." While some were tangential, the topics indicated to the court that appellant had been paying attention to the proceedings. Although defense counsel often interrupted

appellant in the recorded conversation, he seemed to be answering her questions and explaining what he meant in each notation on the list. The court found it significant that every time defense counsel directed appellant to move on to another topic, he complied.

The court found appellant competent to stand trial.

E. Analysis

On review of a finding that a defendant is competent to stand trial we "'must view the record in the light most favorable to the verdict and uphold the verdict if it is supported by substantial evidence.' [Citation.]" (*Blacksher, supra,* 52 Cal.4th at p. 797.)

Appellant argues the trial court erred in finding him competent because he presented substantial evidence that he was not. He contends the court erred in relying on Dr. Knapke's opinion because it was not based on a thorough review of his history and a competent contemporaneous evaluation. He contrasts the amount of time the defense experts spent evaluating him with the much shorter time spent by Dr. Knapke. Appellant's primary argument is that Dr. Knapke did not disagree with his experts' findings that persons suffering from stress suffer from memory impairment, that he had difficulty distinguishing between relevant and irrelevant information, and had problems with answering questions accurately and completely.

Dr. Knapke testified that he did not disagree with Dr. Schaffer's test results. But he went on to say: "However, during my clinical examinations, even though [appellant] was tangential in his responses and did tend to provide irrelevant material, as even Dr. Schaffer documented, I was easily able to redirect the defendant and he was able to answer my questions logically and appropriately." He did disagree with Dr. Schaffer's findings that appellant's memory was significantly impaired, stating that he did not believe appellant's memory problems were sufficient to "cause a problem for him during court proceedings." He explained that in his second interview, appellant was able to clearly remember things he had said in the first interview without difficulty.

Appellant claims that Dr. Knapke agreed that appellant's impaired memory might impact his ability to remember testimony and to assist his attorney. He also claims Dr. Knapke agreed that the inability to distinguish between relevant and irrelevant

information may indicate the cognitive deficit diagnosed by Dr. Dudley. This argument is supported by a citation to Dr. Knapke's testimony regarding whether the great amount of detail given by appellant during the evaluations was relevant to the questions asked. Dr. Knapke was asked whether the inability to distinguish relevant from irrelevant information is a cognitive defect. He answered: "It may or may not. I know that there are many individuals who have problems being concise in answering questions and tend to be very verbose. That does not necessarily mean they have a mental disorder or a mental illness, and it does not necessarily mean they're incompetent to stand trial."

Dr. Knapke found appellant's statement that he needed three writing pens in his pockets at all times sounded like obsessive-compulsive behavior. But this factor alone did not establish appellant was not competent to stand trial. In short, while Dr. Knapke may have observed some of the behaviors noted by the defense experts, he concluded that they did not render appellant incompetent to stand trial.

Appellant suggests, in effect, that Dr. Knapke set too low a standard for competence. This argument is based on Dr. Knapke's testimony that "I don't believe that [appellant] was so tangential, like a schizophrenic would be where he's off on a tangent and never coming back to the original question." Appellant also cites Dr. Knapke's testimony that a defendant need not have a "Harvard law degree" to be found competent because only a basic understanding of courtroom proceedings is required. He also criticizes Dr. Knapke's characterization of appellant as a "high functioning individual" who had been able to live independently in the community and provide for his basic needs. He complains that Dr. Knapke did not verify the accuracy of information provided by appellant. However, Dr. Knapke testified at length about the basis for his conclusion appellant was competent to stand trial. He reached the same conclusion both before and after he reviewed the extensive materials regarding appellant's history.

Appellant points out that Dr. Knapke did not review appellant's jail records (reflecting his involuntary commitment to the psychiatric ward), psychiatric, medical, employment, or Social Security administration disability records before rendering his opinion at the hearing that appellant was competent to stand trial. But Dr. Knapke did

review the records when this omission was raised in cross-examination. He said this additional information was helpful because it solidified his opinion that appellant was competent to stand trial.

Appellant challenges the court's statement crediting Dr. Knapke's diagnosis that appellant had long-standing traits of a personality disorder with mild depression and anxious features. He contends that Dr. Knapke never made this diagnosis. Appellant cites Dr. Knapke's testimony that he could not diagnose appellant with an Axis II personality disorder based on one or two clinical interviews. Dr. Knapke explained that appellant had "recurring traces and features of a personality disorder" and "because of that, I do believe that character pathology is the predominant pathology that we're dealing with here." Later in his testimony, Dr. Knapke gave a series of responses based on having diagnosed appellant with a personality disorder. He explained that he had not gone through the DSM-IV criteria for finding a personality disorder "[b]ecause I was focusing on competency. All I wanted to focus on was whether or not he understood the charges and proceedings against him, and whether he was able to sit down with me, have a rational discussion with me and answer my questions coherently, and I very quickly, after my first interview, determined that he was able to do those things."

Appellant relies on *People v. Bassett* (1968) 69 Cal.2d 122 (*Bassett*), a death penalty case regarding the mental capacity of a schizophrenic 18 year old who had murdered his parents to maturely and meaningfully reflect on the gravity of his contemplated acts.[1] In *Bassett*, the issue was whether the prosecution presented substantial evidence of the defendant's mental capacity because its experts had not personally interviewed the defendant and instead testified based on hypothetical questions. The Supreme Court found that this did not constitute substantial evidence. It contrasted the extensive interviews and evaluations of the defendant performed by the defense expert witnesses with two prosecution experts who did not interview him in

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[1] In 1981, the requirement that a defendant charged with first degree murder maturely and meaningfully reflected on the gravity of his actions was eliminated from section 189. (*People v. Bloom* (1989) 48 Cal.3d 1194, 1211.)

person, and instead reviewed documentary evidence. They testified on the basis of a lengthy set of assumed facts. (*Id*. at pp. 132–137.) The court emphasized the importance of personal interviews of the defendant by the experts. (*Id*. at pp. 142–144.) Even more significant was that the prosecution experts did not explain the reasons for their conclusions for the jury. In addition, they did not attempt to refute the defense psychiatric evidence. (*Id*. at pp. 144–145.)

Appellant argues that Dr. Knapke's evaluation of appellant was inadequate because he only interviewed appellant for a total of two hours and only reviewed the relevant histories during his cross-examination. Unlike the prosecution experts in *Bassett*, *supra*, 69 Cal.2d 122, here Dr. Knapke thoroughly explained the reasons for his conclusions during extensive testimony. He based his conclusion that appellant satisfied the second prong of the competency test on appellant's ability to recall events and conversations, organize thoughts, be redirected to the topic at issue, and pass time in jail reading and playing chess. Dr. Knapke explained that he found appellant's anxiety and depression were typical of incarcerated defendants and were not sufficiently severe to interfere with his ability to rationally cooperate with counsel. In addition, appellant was participating well in group therapy. Dr. Knapke explained in detail why his conclusions differed from those of Dr. Dudley and Dr. Schaffer. He also found no evidence of paranoia in appellant's statements that he feared reprisal by the victim's family or attacks by guards or other prisoners while in jail since in Dr. Knapke's experience, these were common fears expressed by defendants charged with murder. Finally, Dr. Knapke noted that by September 2009, the psychiatrist at the jail reported that appellant had no delusions, was not manic, and was stable.

Expert testimony that a defendant is unable to tolerate stressful situations and that the stress of trial would make it difficult to testify on his own behalf, a contention of appellant here, was found not to be sufficient to find the defendant incompetent to stand trial in *People v. Frye* (1998) 18 Cal.4th 894, 952, overruled on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.

The trial court relied on Dr. Knapke's testimony, as well as appellant's history of lengthy employment and other accomplishments despite two psychiatric episodes. In addition, the court noted that appellant sat quietly and attentively throughout the hearing. He made a list of topics he wanted to discuss with his counsel and explained these within the time his counsel allowed. During that recorded conversation, defense counsel easily interrupted appellant and redirected him to the next topic on his list. (See *People v. Ramos* (2004) 34 Cal.4th 494, 509 [when no substantial evidence exists that defendant is not competent, court's observations and objective opinion become important].) In *Ramos*, the Supreme Court found the defendant competent despite an expressed preference for the death penalty, hoarding of drugs for a suicide attempt, history of violent behavior and psychiatric treatment. (*Ibid.*)

We conclude that the trial court's finding that appellant was competent to stand trial is supported by substantial evidence in the record. (*Blacksher*, *supra*, 52 Cal.4th at p. 797.)

II

Appellant also challenges the sufficiency of the evidence to support his conviction of first degree murder under the due process clause of the Fourteenth Amendment and article 1, section 15 of the California Constitution. He cites *Cage v. Louisiana* (1990) 498 U.S. 39, 41, overruled on another ground in *Estelle v. McGuire* (1991) 502 U.S. 62, 72, fn. 4, for the proposition that "evidentiary certainty" is required to establish on appellate review that a conviction is supported by substantial evidence. *Cage v. Louisiana* does not support this assertion because the language quoted by appellant arose in the context of discussion about a jury instruction on reasonable doubt, rather than appellate review of a conviction for substantial evidence.

Contrary to appellant's assertion, the standard of appellate review of a conviction is established: "'In determining evidentiary sufficiency, the court reviews the entire record, in the light most favorable to the judgment, for the presence of substantial evidence. Substantial evidence is evidence sufficiently reasonable, credible, and of such

solid value "that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) . . .' (*People v. Chatman* [(2006)] 38 Cal.4th 344, 389.)" (*People v. Gonzales* (2012) 54 Cal.4th 1234, 1273.) "'Under principles of federal due process, review for sufficiency of evidence entails not the determination whether the reviewing court itself believes the evidence at trial establishes guilt beyond a reasonable doubt, but, instead, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 317–320.)' (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11 (*Rodriguez*).)" (*People v. Watkins* (2012) 55 Cal.4th 999, 1019–1020 (*Watkins*).)

Appellant argues there was insufficient evidence that the murder was deliberate and premeditated, as required for first degree murder under section 189. "'Deliberation' refers to careful weighing of considerations in forming a course of action; 'premeditation' means thought over in advance. [Citations.] 'The process of premeditation and deliberation does not require any extended period of time. "The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly. . . ." [Citations.]' (*People v. Mayfield* (1997) 14 Cal.4th 668, 767.)" (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080 (*Koontz*).)

Appellant cites three factors constituting evidence of premeditation and deliberation identified by the court in *People v. Anderson* (1968) 70 Cal.2d 15, 26–27 (*Anderson*): planning activity, motive, and manner of the killing. (*Watkins, supra,* 55 Cal.4th at p. 1026, citing *Anderson*, 70 Cal.2d at pp. 26–27.) The *Koontz* court warned that these factors were "'intended as a framework to assist reviewing courts in assessing whether the evidence supports an inference that the killing resulted from preexisting reflection and weighing of considerations. It did not refashion the elements of first degree murder or alter the substantive law of murder in any way.' [Citation.]" (*Id*. at p. 1081.) The *Anderson* guidelines are not exclusive and are not a sine qua non to a conviction of first degree murder. (*Ibid.*)

A. Evidence of Planning

Appellant first argues that there is insufficient evidence that he planned the murder due to his compromised mental health. He cites Dr. Dudley's trial testimony that he suffered from depression mixed with mania, psychosis and psychotic delusions for decades. He also relies on Dr. Dudley's testimony that he had been treated for various mental health issues throughout his adult life, including disorganized and autistic thought processes, severe obsessive compulsive disorder with psychotic episodes, paranoid behaviors, high levels of anxiety and agitation, severely impaired judgment and insight, manic symptoms, pressured speech, thought process difficulties, and flight of ideas. He had been treated with various psychiatric medications. Appellant also cites evidence that his mental condition had deteriorated in the months and weeks before he killed his wife.

In addition, appellant argues that the circumstances of the murder do not indicate planning. The victim was struck with a clothes iron found in the bedroom and was stabbed with knives. Appellant asserts there was no evidence as to how the knives came to be in the room where the murder occurred. He contends that this evidence does not indicate an act that was "'so particular and exacting' as to show that defendant must have 'intentionally killed according to a preconceived design.' (*People v. Anderson*, *supra*, 70 Cal.2d at p. 27; see *People v. Rowland* [(1982)]134 Cal.App.3d [1, 8] [use of cord already at crime scene to strangle victim does not support finding of premeditation and deliberation].)"

Respondent points out that in his recorded statement to police, appellant said he brought two knives from the kitchen into the bedroom where the victim was sleeping. He struck her twice with an iron, and when she fought back, stabbed her with the knives. This interview was played for the jury. The jury could reasonably infer that when he brought the two knives into the bedroom from the kitchen, appellant planned to kill his wife.

B. Evidence of Motive

The *Anderson* court identified the second factor as "facts about the defendant's *prior* relationship and/or conduct with the victim from which the jury could reasonably infer a 'motive' to kill the victim. . . ." (*Anderson, supra*, 70 Cal.2d at p. 27.)

Appellant argues there is insufficient evidence of a motive for the murder. In closing argument, the prosecutor said appellant killed his wife because he feared that she was going to leave him. The prosecutor cited appellant's statement to the police after his arrest that prior to the murder, he had noticed that certain items were missing from their home, his wife stopped consulting him about financial matters, and they were sleeping in separate beds. In his interview with the detective, appellant said that his wife caught him snooping in her belongings and that she told him that this was the "last straw." He said they argued continuously. He had realized that everything in their townhouse, furniture and appliances, belonged to his wife. Appellant told the detective that on the day of the murder, or the day before, he and his wife had argued about whether she was going to leave him. The victim was upset. Appellant told the detective he was enraged at the time of the killing.

Describing the prosecutor's theory as "nonsensical" and "speculative," appellant argues there was no rational motive for him to murder his wife. He reasons that if he feared losing his wife, murdering her was irrational because it made that fear an actuality. Appellant speculates that in light of his issues with social interactions, he "completely misread his wife's intentions, rapidly compensated and panicked." No citation to the record is given in support of this assertion, since appellant did not testify in his own defense and did not make statements consistent with this theory in his interview with the police detective after the crime.

Immediately before the murder, appellant said he begged his wife to stay with him because he could not function without her. Appellant's statements to the police that he was enraged about this situation establish a motive for the murder from which the jury could rationally find the murder was deliberate and premeditated. (*People v. Miranda* (1987) 44 Cal.3d 57, 87 ["'[The]law does not require that a first degree murderer have a

"rational" motive for killing. Anger at the way the victim talked to him . . . may be sufficient.' [Citations.]"], overruled on another ground in *People v. Marshall* (1990) 50 Cal.3d 907, 933, fn. 4.)

C. Manner of Killing

Appellant contends that evidence of the manner of the killing is more consistent with a killing in the course of an emotional outburst rather than deliberate and premeditated murder. He cites the evidence that he used a nearby clothes iron and two knives, one of which bent in the attack, plus the numerous wounds inflicted on various parts of the victim's body. He contends the manner of the killing indicates "the perpetrator took whatever item was available and used that to kill." This argument ignores appellant's own admission to the police that he brought two knives into the bedroom with him when he attacked his wife.

We are satisfied that there is substantial evidence from which the jury could infer that the killing was deliberate and premeditated.

III

At sentencing, the trial court imposed and stayed a parole revocation fine of $5,200. The abstract of judgment does not reflect that this fine was stayed. The oral pronouncement of sentence by the trial court controls over any discrepancy with the abstract of judgment. (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1373.) We shall direct the trial court to prepare an amended abstract of judgment which correctly reflects that this fine was stayed.

DISPOSITION

The trial court is directed to prepare an amended abstract of judgment reflecting that the $5,200 parole revocation fine was imposed and stayed and to forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.